

Kim-Prieto, Dennis

Wither law student information literacy?

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Alexander Botte – Paul Libbrecht – Marc Rittberger (eds)

Learning Information Literacy Across the Globe

Frankfurt am Main, May 10th 2019



*Information literacy (IL)
as a learning process*



Cultural diversity of information literacy



DIPF

Bildungsforschung
und Bildungsinformation





















*Digital learning resources
for IL (e.g. MOOCs, scenarios, OERs)*



*Information-literacy in connection
to other literacy concepts*



Contents

| | | |
|--|-----|---|
| Foreword | 3 | |
| <i>In a world of stigma and flow - how youth master information in their daily lives -</i> (Jannica Heinström) | 5 |   |
| <i>Concept and development of an Information Literacy Curriculum Widget</i> (Angela Fessler, Ilija Simic, Sabine Barthold and Viktoria Pammer-Schindler) | 7 |  |
| <i>Analysing Informed Learning at Maastricht University</i> (Sefan Jongen, Jaro Pichel, Frederike Vernimmen-de Jong and Harm Hospersr) | 19 |  |
| <i>Information Literacy, epistemic cultures and the question „Who needs what?“</i> (Antje Michel and Inka Tappenbeck) | 35 |  |
| <i>Digital and information literacy as discursive mapping of an information landscape</i> (Andrew Whitworth and Lee Webster) | 45 |  |
| <i>Improving tagging literacy to enhance metadata and retrieval for open educational resources</i> (Helena Keck and Tamara Heck) | 57 |  |
| <i>How librarians can engage citizens to use open access contents and open data as source for fact-checking</i> (Paola Coppola and Damiano Orrù) | 67 |  |
| <i>Information Literacy Online – An Erasmus+ Project to improve students’ competencies</i> (Stefan Dreisiebner) | 71 |   |
| <i>Interactive learning technologies</i> (Jan Schneider) | 73 |   |
| <i>Developing Metaliterate Citizens: Designing and Delivering Enhanced Global Learning Opportunities</i> (Trudi Jacobson, Thomas Mackey and Kelsey O'Brien) | 74 |  |
| <i>The InfoLit Project (2015-18): A collaboration among eight university libraries in Hong Kong</i> (Shirley Chiu-Wing Wong and Johnny Yuen) | 90 | |
| <i>IL in secondary school</i> (Josep García) | 100 |  |
| <i>Wither Law Student Information Literacy?</i> (Dennis Kim-Prieto) | 104 |  |
| <i>Creating a Multilingual MOOC Content for Information Literacy: A Workflow</i> (Paul Libbrecht, Stefan Dreisiebner, Björn Buchal and Anna Polzer) | 114 |  |
| <i>Information literacy and its interplay with AI</i> (Tamara Heck, Luzian Weisel and Sylvia Kullmann) | 129 |  |
| <i>Panel: What do we mean when we talk about IL?</i> | 132 |  |
| Acknowledgements | 133 | |

( presentation,  movie recording)

Wither Law Student Information Literacy?

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Abstract: Information Literacy has only recently been applied to instructional frameworks and benchmarking assessment for legal research skills in the United States. This paper seeks to answer two simple questions: what has IL done for legal research since AALL has adopted Legal Research Competencies and Standards for Law Student Information Literacy, and what is the future of IL in legal research classrooms and the practice of law around the world?

Keywords: Legal Research Skills, Law Student Information Literacy, Legal Information Literacy.

1 What is Law Student Information Literacy?

1.1 The Road Recently Taken...

In 2011, my paper proposing standards for law student information literacy, entitled “The Road Not Yet Taken: How Law Student Information Literacy Standards Address Identified Issues in Legal Research Education & Training,” was published in the pre-eminent scholarly journal covering law librarianship in North America. [1] Two years later, the American Association of Law Libraries adopted the Principles & Standards for Legal Research Competency (hereinafter, “Principles & Standards”), a document strongly informed by the draft standards I proposed in the article cited above. [2]

Law Student Information Literacy is summarized from top-level descriptors down, starting with overarching Principles that describe a given area of research abilities, which are analyzed into Standards that identify particular skills, resulting in Competencies that describe the behaviors of students who possess these skills.

The Principles are brief enough to be quoted here. They are, *seriatim*:

1. A successful legal researcher possesses foundational knowledge of the legal system and legal information sources;
2. A successful legal researcher gathers information through effective and efficient research strategies;
3. A successful legal researcher critically evaluates information;
4. A successful legal researcher applies information effectively to resolve a specific issue or need;
5. A successful legal researcher distinguishes between ethical and unethical uses of information, and understands the legal issues associated with the discovery, use, or application of information.

Attentive readers who notice similarities between the Principles & Standards and the first iteration of ACRL Standards for Information Literacy (ultimately replaced by the current ACRL Framework for Information Literacy for Higher Education) should know that these similarities are not unintentional. As one of the librarians consistently contributing to the working groups, task forces, and committees preparing the Principles & Standards, this author can attest to the fact that we were quite conscious of the ACRL's work, and found the reliance on competencies nested within standards underneath overarching principles to be a very useful model for the particular demands that legal research requires in the context of practice within a Common law jurisdiction.

Tuominen, Savolainen, and Talja famously posit that Information Literacy is a sociotechnical practice; they note that the “interplay between knowledge formation, workplace learning, and information technologies is crucial for the success of IL initiatives.” [3] These factors are also crucial in the successful practice of law in the US: the American Bar Association has fully approved of the notion of “A Lawyer’s Duty of Technological Competence.” [4] And as of this writing, 34 of the 50 United States have adopted this duty into their local rules of practice. [5] The other factors, knowledge formation and workplace learning, are easily recognized in the practice of law as the formal legal training that a student undertakes to become a lawyer, and the licensing and requirements of continuing legal education that jurisdictions require for one to continue practicing as a lawyer.

Since the approval of the Principles & Standards, several publications and presentations have discussed and analyzed the standards as well as the overarching concept of legal information literacy; writing from a variety of jurisdictions, and focusing upon classroom research instruction. [6] AALL has also offered webinars training law librarians in the Principles & Standards, which reinforces the importance of such benchmarking to legal research education. [7]

1.2 Foundations of the Road that Lies Ahead...

The future of Law Student Information Literacy must be multinational. As legal practice continues to cross borders, knowledge of the foundations of legal systems, which provide context for understanding distinctions among legal systems, becomes more critical. [8] Law Student Information Literacy begins with knowledge of the foundations of the legal system in question, so the importance of an approach to legal research pedagogy grounded in Law Student Information Literacy is clear.

However, like legal systems themselves (and the comparisons of such systems), the future of Law Student Information Literacy is complex and nuanced. Legal systems of the world do not all share the same foundations, and are largely, if grossly, divided into two general systems: Civil law and Common law systems. Civil law is the dominant system in Europe, Asia, and Africa, and largely traces its roots to German iterations of Napoleon’s efforts to codify and update the traditions of Roman Law to fit the needs of his empire. In any Civilian jurisdiction, the Code remains the source and foundation of law; and the Code comes from the legislature, parliament, or local body charged with writing the law.

Common law is the dominant system in the (former) British Commonwealth, including Canada, Australia, New Zealand, and the United States (which was never a proper member of the Commonwealth, but traces much of its legal and social traditions back to its founding as a British colony). While Common law jurisdictions tend to codify laws and regulations, and empower legislatures or parliaments to write those laws, they also reserve the right of reviewing such laws to the judiciary. The notion of judicial review, which has been the cornerstone of United States jurisprudence since *Marbury v. Madison*, 5 U.S. 137 (1803), has only begun to gather purchase among Civilian jurisdictions in the past generation or so. Assessing the value and longevity of this relatively recent development among Civil law jurisdictions remains a matter of individual scholarly judgment. [9]

To add nuance, many legal systems are also based in Custom or tradition, Religion, or, most commonly, some variation of these mixed with Civilian or Common law elements. When we look at the figure below, and consider the populations involved, it becomes immediately obvious that the majority of people on this planet are governed by a mixed type of legal system, usually involving some local evolution of a combination of Civilian jurisprudence, mixed with Customary or Religious law.

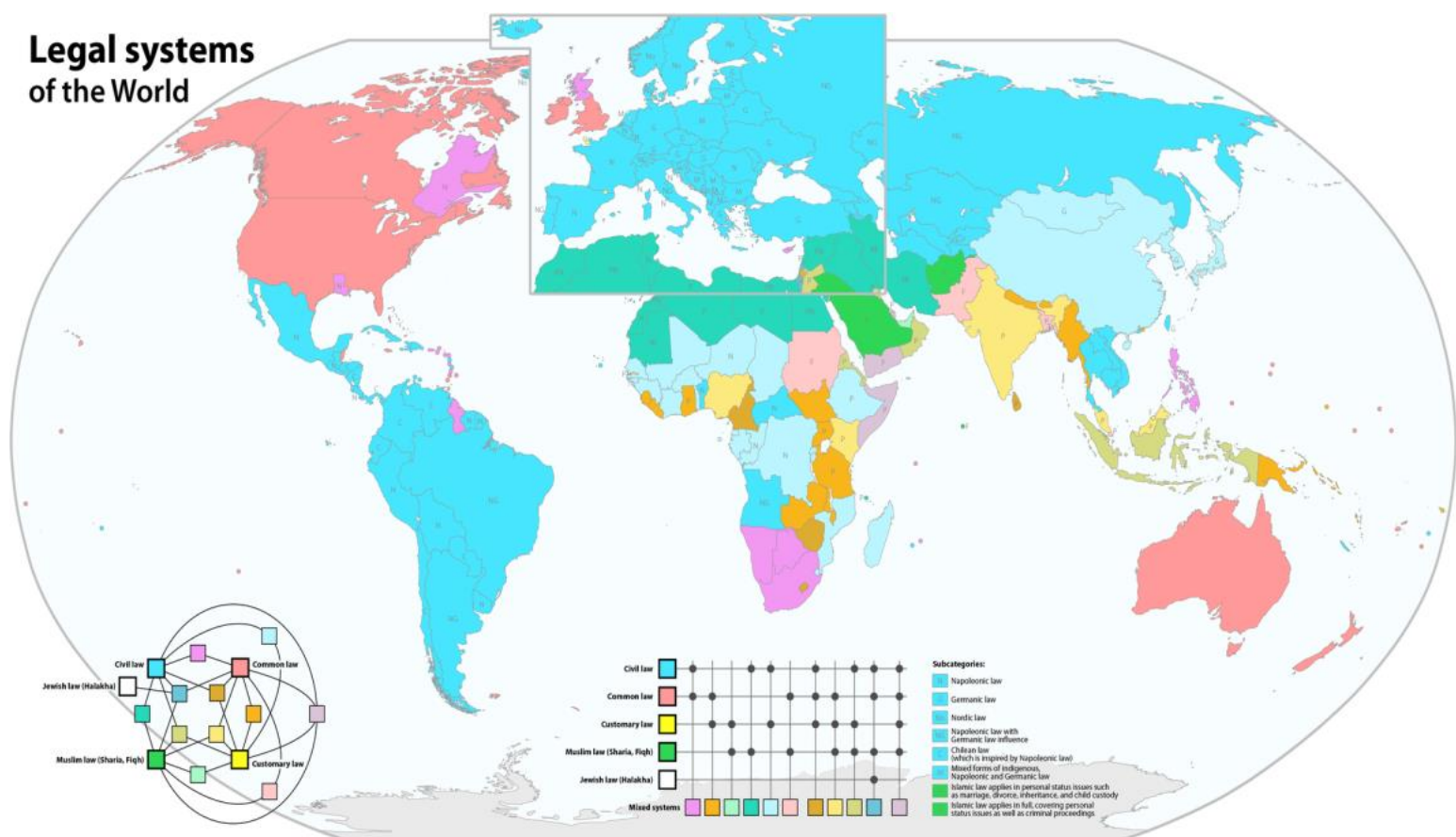


Figure 1: Legal systems of the world. The primary colors on the left side of the graph legend indicate, from top to bottom, Civil law, Common law, Customary law, Islamic law, and Jewish law. The blended colors running along the bottom of the graph legend indicate mixed legal systems. Note that the numerical majority of the world's population (consisting of the populations of China, India, Indonesia, as well a plurality of people on the continent of Africa) is governed by mixed legal systems, combining Custom, Civilian (or Common) Law, and/or Religion. [10]

Because legal research requires the practitioner to start searching for information among the types of documents that her legal system relies upon, legal researchers from differing jurisdictions will tend to start their research in different places. For example, an attorney who practices in France will likely start to look to the relevant local or national code for information and further guidance. An attorney who practices in the United States would not be incorrect in looking at published case law from state or local federal courts for guidance, or even to secondary sources that analyze this case law and other legal or regulatory developments in the area. And an attorney who practices in a Religious legal system would look to the foundational documents of that religion, as well as authoritative commentary on those documents, to find the information necessary to analyze the problem before her. All of these approaches are correct in the jurisdiction that a given practitioner works in, and baffling to attorneys who come from outside that jurisdiction.

And of course, because our subject is the practice of law, it is critical to remember that there are always exceptions: Louisiana, in the United States, provides such an exception; local state law there is based upon the French and Spanish Civilian Codes, while the overarching U.S. Federal system that governs Louisiana and other US states and territories is a Common law jurisdiction. [11] Scotland, in the United Kingdom, also retains some features of Civilian jurisprudence while remaining, like Louisiana in the United States, subject to a national jurisprudence that remains firmly based in Common law traditions. The Canadian province of Quebec is similarly positioned with respect to the larger Canadian federal legal system.

Moreover, as alluded to above, some Civilian jurisdictions have started to look to features of Common law to help resolve disputes, especially between states and their citizens. Mexico is one example, having in the past generation or so begun to look to decisions published by their federal Suprema Corte de Justicia de la Nación for limited guidance. [12] Even more surprisingly of late, some discussion at international conferences of legal scholars and librarians has expressed the notion of a “Common law of the European Union” comprised of the body of law that has emerged from the EU courts. [13] This a notion that would have been shocking 20 years ago, and unthinkable 40 years ago.

It is also critical to remember that legal training differs from jurisdiction to jurisdiction, just as legal tradition does. For example, United States bar associations have, with few exceptions, required that attorneys be trained in graduate-level schools of law for more than one hundred years. This degree is known as the Juris Doctor (JD), and generally requires an amount of classroom instruction comparable to a traditional Doctor of Philosophy degree (generally between 80 to 100 academic units of study), but completed within three to four years of commencing such study. The UK and Canada, however, allow attorneys to practice after taking an undergraduate degree in law, subsequent licensure and a bit of apprenticeship clerking (commonly called “articling” in Canada). These two Common law jurisdictions follow the norm of Civil law jurisdictions, where the practice of law requires licensure after an undergraduate or bachelor’s degree. Attorneys may pursue further graduate degrees in law (usually a Master’s of Law, commonly abbreviated as LLM), which may train the student in subject-area spe-

cializations (taxation is a common example), or may, in the case of foreign-trained attorneys coming to the US, provide a comprehensive understanding of United States law and practice. For obvious reasons, this latter option is never available to US-trained attorneys who have already earned the JD, but the LLM in taxation or other subject-area specialties are awarded to those US-trained attorneys who complete that course of study.

And once more, as observed above, since we are dealing with legal practice, we must always be sure to remind ourselves that exceptions to the rule occur. Within the realm of legal training, several jurisdictions outside of the US have been exploring the costs and benefits of requiring attorneys to complete graduate-level education as a condition of admittance to practice. Kim has written extensively on such developments in the Republic of Korea (South Korea), but other scholars have also noticed similar developments, primarily in East Asian jurisdictions. [14] In short, systems of legal training, much like legal systems themselves, display the sort of diversity and variation that we would expect from any compared population taken from globally-acquired samples. Nevertheless, research education remains a critical component of legal education, as research remains a critical component of the practice of law. The rest of this paper attempts to account for these distinctions while suggesting approaches to legal research instruction that might address the needs of various national (and international) bars and judiciaries.

2 Steps along the Road that Lies Ahead

Some of the work necessary for bringing Law Student Information Literacy into the training and practice of law around the globe has already been completed. Interestingly enough, both China and Turkey have experimented with early iterations of advanced legal research training between thirty to forty years ago, only to have placed these initiatives on hold until very recently. [15] Indian law librarians have recently called for more emphasis on information literacy in the law curriculum. [16] Dutch law professors and law librarians have long argued for the inclusion of information literacy in the legal curriculum. [17] Law librarians in Croatia and Slovenia have noted the need for building information literacy programs in law curricula in their nation. [18] The United Kingdom has adopted Information Literacy Standards through the British and Irish Association of Law Librarians (BIALL), in order to “enable law students, at both the academic and vocational stage of training, to develop comprehensive legal research skills following a five stage model.” [19] The fact that the BIALl statement follows a five stage model in a manner similar to the Principles & Standards speaks less to the influence of the Principles & Standards *per se*, and more to the iterative nature of research in Common law jurisdictions, demonstrating the utility of such a model when legal research is a process as much as a task. [20] It should also surprise no one that separate Common law jurisdictions would have similar needs and similar issues when conducting legal research.

Likewise, it should surprise no one that Civil law and Common law practitioners would have differing needs and different issues when conducting legal research. To

this end, the five stage analytical model that provides the structure of the Principles & Standards as well as the BIALL statement may not be the most useful model for articulating legal information literacy in Civil law jurisdictions. This is a question that is most appropriately left to law librarians from Civilian jurisdictions, as they understand the needs of their patrons better than librarians from Common law or other types of jurisdictions. But it does seem to be the case that effective benchmarking of legal information literacy must be embedded in the training required to practice in a given jurisdiction, as research is a critical step in legal practice, and legal practice requires a jurisdiction, if not always national boundaries.

Public international law is a prime example of a jurisdiction that transcends boundaries. The International Association of Law Libraries has already issued research instruction guidelines for law librarians teaching that subject; not merely offering another example of benchmarking for legal research skills through instruction, but also providing another model for articulating such benchmarks. *Viz.*, the IALL “guidelines follow the structure of [A]rticle 38 of the Statute of the International Court of Justice (ICJ).” [21] Basing research skills and instructional benchmarking explicitly from code text may well be the most suitable model for the articulation of Law Student Information Literacy among Civil law jurisdictions. But again, that is a decision best left to the law librarians who provide access to legal information and who train law students in those Civilian jurisdictions.

So, given these developments, where can Law Student Information Literacy go from here? The Principles & Standards were explicitly adopted “to foster best practices in law school curriculum development and design; to inform law firm planning, training and articulation of core competencies; to encourage bar admission committee evaluation of applicants’ research skills; to inspire continuing legal education program development; and for use in law school accreditation standards review.” [22] Note that none of these goals are exclusive to any jurisdiction, and indeed, many are common throughout differing jurisdictions. As a minor example, and for about 10 years as of this writing, the USA-based National Council of Bar Examiners has been contemplating the addition of a legal research examination to the Multi-State Exam that most US state jurisdictions require attorneys to pass in order to practice. [23] Alas, and much to the relief of American-trained law students everywhere, such an addition to the Multi-State Exam remains in development. Nevertheless, as this author has noted elsewhere, the development of the Principles and Standards represents “the beginning of a methodical approach to evaluating legal research competency.” [24]

And a methodical approach to evaluating legal research skills, be it through the sort of frame offered by AALL and BIALL, or through a strategy embedded within code governing a Civilian jurisdiction, is the ultimate goal. Every librarian knows that decision-makers respond to data, but data is simply the information that emerges from that which we choose to measure. A methodological approach to evaluation of legal research skills and competencies is measurable, and can be used to create assessments that produce valuable data about our students’ research abilities. Such assessments are at the heart of effective pedagogy.

But Law Student Information Literacy is not merely the result of any given student’s choice to attend to the details of sources of legal information, including their access,

use, functions, and the responsibilities inherent in using them; it is also the result of larger policy choices that those parties who administer legal practice elect to adopt. Of course, each jurisdiction is free to choose this option or not, but this author certainly hopes that they will adopt policies that favor and encourage methodological approaches to evaluating legal research competency.

As a matter of policy, jurisdictions and those who govern them may choose to respond to exigencies beyond the purely academic. The phenomenon of “fake news” comes to mind here. Scholars have explicitly linked information literacy to a solution for the general problem of “fake news” [25]; but in the practice of law where information, and in particular, documents, may have the power to compel or restrict actions and behaviors, the need for information that tribunals can thoroughly rely upon becomes even more critical.

Additionally, the pervasive influence of search engines in legal research requires a focus on Law Student Information Literacy. Scholars have noted the broad variability of search results across the major electronic legal databases prevalent in the US, with different sources providing differing results for the same search terms. [26] Since these databases are, and are likely to remain, such essential tools for legal researchers, the value of a critical, metacognitive, and methodological approach to Law Student Information Literacy becomes even more significant. If the algorithms used by legal databases provide differing results for the same search terms (or if the results simply vary from vendor to vendor), attorneys must learn early in their careers to be skeptical of these results. Both Nevelow Mart and Wheeler note that these results do vary, for a variety of reasons. [27]

Fortunately, the practice of law has already adopted rules regarding the introduction of information into courts, tribunals, and other decision-making bodies. This is exactly why Law Student Information Literacy offers so much promise in this area: rather than discovering best practices for assessing and evaluating the reliability of information anew, we can look to rules and guidelines that have already served the practice for generations, and refer to them as we prepare today’s students, who become tomorrow’s members of the bench and bar.

3 Conclusion

Law Student Information Literacy has already shown itself to be an influential concept in legal research instruction in the US and the UK. It has influenced guidelines for international legal research, and it has been cited and referenced in several other jurisdictions. Given the nature of and reliance upon search engines and databases for legal research, the need for a systematic, methodological, and metacognitive approach to legal research instruction is essential, and focusing upon Law Student Information Literacy has provided the groundwork for such an approach.

But more work needs to be done. It is this author’s hope that the paper will serve as the introduction to a monograph being planned as of this writing: an exploration of Law Student Information Literacy in legal research instruction around the world. Readers who have an interest in this field are invited to contact me directly and discuss the

possibility of contributing a chapter to this monograph. And all instructional law librarians, from all jurisdictions, should explore these topics in a manner that best suits their individual jurisdiction.

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